

**JP3 Provision 4-1, Type of Contract**

*As prescribed in 4.1.2b, the contracting officer will insert this provision in Section L*

**Type of Contract (JAN 2003)**

The judiciary plans to award a \_\_\_\_\_ (*Contracting officer inserts specific type of contract*) type of contract under this solicitation, and all offers shall be submitted on this basis. Alternate offers based on other contract types will not be considered.  
(end)

**JP3 Clause 4-5, Ordering**

*As prescribed in 4.1.5i(1)(a), the contracting officer will insert this clause in Section I.*

**Ordering (JUNE 2003)**

- (a) Any products and services to be furnished under this contract will be ordered by issuance of written delivery orders or task orders by the individuals or activities designated in the schedule. Such orders may be issued from the effective date of the contract through the last day of the contract.
  - (b) All delivery orders or task orders are subject to the terms and conditions of this contract and will specify the date, time and place for the services to be performed. If the contracting officer so requires, the contractor shall provide a written or oral acknowledgment. In the event of a conflict between a delivery order or a task order and this contract, this contract will control.
  - (c) If mailed, a delivery order or a task order is considered “issued” when the judiciary deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the schedule.
- (end)

**JP3 Clause 4-10, Order Limitations**

*As prescribed in 4.1.5i(1)(b), the contracting officer will insert this clause in Section I.*

**Order Limitations (JAN 2003)**

- (a) *Minimum order* When the judiciary requires products or services covered by this contract in an amount less than \_\_\_\_\_ (*contracting officer insert minimum dollar amount or quantity*), the judiciary is not obligated to purchase, nor is the contractor obligated to furnish, those products or services under this contract.

- (b) *Maximum order* The contractor is not obligated to honor:
  - (1) any order for a single item in excess of \_\_\_\_\_ (*contracting officer insert maximum dollar amount or quantity*);
  - (2) any order for a combination of items in excess of \_\_\_\_\_ (*contracting officer insert maximum dollar amount or quantity*); or
  - (3) a series of orders from the same ordering office in the course of \_\_\_\_\_ days (*contracting officer specify*) that together call for quantities exceeding the limitations stated in subparagraph (b)(1) or (b)(2) above.
- (c) If this is a requirements contract, (i.e. includes the “Requirements” clause JP3 Clause 4-20) the judiciary is not required to order a part of any one requirement from the contractor if that requirement exceeds the maximum-order limitations stated in paragraph (b) above.
- (d) Notwithstanding paragraphs (b) and (c) of this section, the contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within \_\_\_\_\_ days (*contracting officer specify*) after issuance, with written notice stating the contractor’s intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the judiciary may acquire the products or services from another source.

(end)

### **JP3 Clause 4-15, Definite Quantity**

*As prescribed in 4.1.5i(2), the contracting officer will insert this clause in Section I.*

#### **Definite Quantity (JAN 2003)**

- (a) This is an indefinite-delivery, definite-quantity contract for the products or services specified, effective for the period stated in the schedule, and the contractor shall furnish them when ordered. Delivery or performance shall be at locations designated in orders issued in accordance with the Ordering clause and the contract schedule.
- (b) Except for any limitations on quantities in the Order Limitations clause or in the schedule, there is no limit on the number of orders that may be issued.
- (c) Any order issued during the effective period of this contract and not completed within that time shall be completed by the contractor within the time specified in the order. The contract will govern the contractor’s and judiciary’s rights and obligations with respect to that order to the same extent as if the order were completed during the contract’s effective period.

(end)

### **JP3 Clause 4-20, Requirements**

*As prescribed in 4.1.5i(3), the contracting officer will insert this clause in Section I.*

**Requirements (JAN 2003)**

- (a) This is an indefinite-delivery requirements contract for the products or services specified, and effective for the period stated in the schedule. The quantities of products or services specified in the schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the judiciary's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the schedule, that fact will not constitute the basis for an equitable price adjustment.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the contractor shall furnish to the judiciary all products or services specified in the schedule and called for by orders issued in accordance with the Ordering clause.
- (c) Except as this contract otherwise provides, the judiciary will order from the contractor all the products or services specified in the schedule that are required to be purchased by the activity or activities specified in the schedule.
- (d) The judiciary is not required to purchase from the contractor requirements in excess of any limit on total orders under this contract.
- (e) If the judiciary urgently requires delivery or performance of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the contractor will not accept an order providing for the accelerated delivery, the judiciary may acquire the urgently required products or services from another source. In the event that the contractor accepts such an order for accelerated delivery, such accelerated delivery shall not constitute the basis for an equitable price adjustment.
- (f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the contractor within the time specified in the order. The contract will govern the contractor's and judiciary's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period.

(end)

**JP3 Clause 4-25, Indefinite Quantity**

*As prescribed in 4.1.5i(4), the contracting officer will insert this clause in Section I.*

**Indefinite Quantity (JAN 2003)**

- (a) This is an indefinite-delivery indefinite-quantity contract for the products or services specified, and effective for the period stated, in the schedule. The quantities of products and services specified in the schedule are estimates only and are not purchased by this contract.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The contractor shall furnish to the judiciary, when and if ordered, the

products or services specified in the schedule up to and including the quantity designated in the schedule as the “maximum.” The judiciary will order at least the quantity of products or services designated in the schedule as the “minimum.”

- (c) Except for any limitations on quantities in the Order Limitations clause or in the schedule, there is no limit on the number of orders that may be issued.
- (d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the contractor within the time specified in the order. The contract will govern the contractor’s and judiciary’s rights and obligations with respect to that order to the same extent as if the order were completed during contract’s effective period.

(end)

### **JP3 Clause 4-30, Payment (Time-and-Materials and Labor-Hour Procurements)**

*As prescribed in 4.1.7d, the contracting officer will insert this clause in Section I.*

#### **Payment (Time-and-Materials and Labor-Hour Procurements) (JAN 2003)**

The judiciary will pay the contractor as follows upon submission of invoices or vouchers approved in writing by the contracting officer:

- (a) *Hourly rate*
  - (1) The amounts will be computed by multiplying the appropriate hourly rates prescribed in the schedule by the number of direct labor hours performed. The rates will include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour will be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals if approved in writing by the contracting officer). The contractor will substantiate vouchers by evidence of actual payment and by individual daily job time cards, or other substantiation approved in writing by the contracting officer. Promptly after receipt of each substantiated voucher, the judiciary will, except as otherwise provided in this contract, and subject to the terms of paragraph (e) of this section, pay the voucher as approved in writing by the contracting officer.
  - (2) Unless otherwise prescribed in the schedule, the contracting officer will withhold five percent of the amounts due under this paragraph (a), but the total amount withheld may not exceed \$50,000. The amounts withheld will be retained until the execution and delivery of a release by the contractor as provided in paragraph (f) of this section.
  - (3) Unless the schedule prescribes otherwise, the hourly rates in the schedule will not be varied by virtue of the contractor having performed work on an overtime basis. If no overtime rates are provided in the schedule and overtime work is approved in writing in advance by the contracting officer, overtime rates may be negotiated. Failure to agree upon these overtime rates will be treated as a dispute under the Disputes clause of this contract. If the schedule provides rates for overtime, the premium portion of those rates

will be reimbursable only to the extent the overtime has been approved in writing in advance by the contracting officer.

(b) *Materials and subcontracts*

- (1) The contracting officer will determine allowable costs of direct materials. Direct materials, as used in this clause, are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product.
- (2) The contractor may include reasonable and allocable material handling costs in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the contractor's usual accounting practices.
- (3) The judiciary will reimburse the contractor for products and services purchased directly for the contract only when payments of cash, checks, or other forms of payment have been made for such purchased products or services.
- (4)
  - (i) The judiciary will reimburse the contractor for costs of subcontracts that are authorized under the Subcontracts clause of this contract, provided, that the costs are consistent with subparagraph (b)(5) of this clause.
  - (ii) The judiciary will limit reimbursable costs in connection with subcontracts to the amounts paid for products and services purchased directly for the contract only when the contractor has made or will make payments of cash, checks, or other forms of payment to the subcontractor:
    - (A) in accordance with the terms and conditions of a subcontract or invoice; and
    - (B) ordinarily prior to the submission of the contractor's next payment request to the judiciary.
  - (iii) The judiciary will not reimburse the contractor for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.
- (5) To the extent possible, the contractor shall:
  - (i) obtain materials at the most advantageous prices available, with due regard to securing prompt delivery of satisfactory materials; and
  - (ii) take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the contractor shall promptly notify the contracting officer and give the reasons. The contractor shall give credit to the judiciary for cash and trade discounts, rebates, scrap, allowances, credits, salvage, commissions, and other amounts that have accrued to the benefit of the contractor, or would have accrued except for the fault or neglect of the contractor. The contractor shall

not deduct from gross costs the benefits lost without fault or neglect on the part of the contractor or lost through fault of the judiciary.

- (c) *Total cost* It is estimated that the total cost to the judiciary for the performance of this contract shall not exceed the ceiling price set forth in the schedule, and the contractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under this contract within such ceiling price. If at any time the contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing the contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the schedule, the contractor shall notify the contracting officer, giving a revised estimate of the total price to the judiciary for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the contractor has reason to believe that the total price for this contract will be substantially greater or less than the then stated ceiling price, the contractor shall so notify the contracting officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the judiciary has reason to believe that the work to be required in performing this contract will be substantially greater or less than the then stated ceiling price, the contracting officer will advise the contractor, giving the then revised estimate of the total amount of effort to be required under the contract.
- (d) *Ceiling price* The judiciary will not be obligated to pay the contractor any amount in excess of the ceiling price in the schedule, and the contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the schedule, unless and until the contracting officer will have notified the contractor in writing that the ceiling price has been increased, and will have specified in the notice a revised ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the schedule has been increased, any hours expended or material costs incurred by the contractor in excess of the ceiling price before the increase will be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.
- (e) *Audit* At any time or times before final payment under this contract the contracting officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made will be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the contracting officer not to have been properly payable and will also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and written approval of the voucher or invoice designated by the contractor as the “completion voucher” or “completion invoice” and substantiating material, and upon compliance by the contractor with any required release and all other terms of this contract, the judiciary will promptly pay any balance due the contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the contractor as promptly as practicable following completion of the work under this contract, but in no event later than one year (or such longer period as the contracting officer may approve in writing) from the date of completion.

- (f) *Assignment* The contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the judiciary, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:
- (1) specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the contractor;
  - (2) claims, together with reasonable incidental expenses, based upon the liabilities of the contractor to third parties arising out of performing this contract, that are not known to the contractor on the date of the execution of the release, and of which the contractor gives notice in writing to the contracting officer not more than 6 years after the date of the release or the date of any notice to the contractor that the judiciary is prepared to make final payment, whichever is earlier;
  - (3) claims for reimbursement of costs (other than expenses of the contractor by reason of its indemnification of the judiciary against patent liability), including reasonable incidental expenses, incurred by the contractor under the terms of this contract relating to patents.
- (g) *Refunds* The contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the contractor or any assignee, that arise under the materials portion of this contract and for which the contractor has received reimbursement, shall be paid by the contractor to the judiciary. The contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the judiciary of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the contracting officer.
- (h) *Interim payments*
- (1) Interim payments made prior to the final payment under the contract are contract financing payments. The judiciary is not subject to any interest penalty and contract financing payments are also not subject to any interest penalty.
  - (2) The designated payment office may make interim payments for contract financing after the designated billing office receives a proper payment request. In the event that the judiciary requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(end)

**JP3 Clause 4-35, Execution and Commencement of Work (Letter Contract)**

*As prescribed in 4.1.9h(1), the contracting officer will insert this clause in Section I.*

**Execution and Commencement of Work (Letter Contract) (JAN 2003)**

The contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the contracting officer not later than \_\_\_\_\_ (*contracting officer inserts date*). Upon acceptance by both parties, the contractor shall proceed with performance of the work, including purchase of necessary materials.

(end)

**JP3 Clause 4-40, Limitation of Judiciary Liability (Letter Contract)**

*As prescribed in 4.1.9h(2), the contracting officer will insert this clause in Section I.*

**Limitation of Judiciary Liability (Letter Contract) (JAN 2003)**

- (a) In performing this contract, the contractor is not authorized to make expenditures or to incur obligations exceeding \$ \_\_\_\_\_ (*contracting officer inserts limit*).
- (b) The maximum amount for which the judiciary will be liable if this contract is terminated is \$ \_\_\_\_\_ (*contracting officer inserts maximum liability*).

(end)

**JP3 Clause 4-45, Contract Definitization**

*As prescribed in 4.1.9f and 4.1.9h(3), the contracting officer will insert this clause in Section I.*

**Contract Definitization (JAN 2003)**

- (a) A \_\_\_\_\_ (*contracting officer inserts type of contract*) definitive contract is contemplated. The contractor agrees to begin promptly negotiating with the contracting officer the terms of a definitive contract that will include:
  - (1) all judiciary clauses required on the date of execution of the letter contract;
  - (2) all clauses required by law on the date of execution of the definitive contract; and
  - (3) any other mutually agreeable clauses, terms, and conditions. The contractor agrees to submit a \_\_\_\_\_ (*insert specific type of offer; e.g., fixed-price or cost-and-fee*) offer and cost or pricing data supporting its offer.



- (b) The schedule for definitizing this contract is *(insert target date for definitization of the contract and dates for submission of offer, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and cost or pricing data)*:
- (1) Definitization target date \_\_\_\_\_
  - (2) Offer submission date \_\_\_\_\_
  - (3) Beginning of negotiations date \_\_\_\_\_
  - (4) Other appropriate dates \_\_\_\_\_
- (c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the contracting officer, the contracting officer may, with the prior written approval of the judiciary Procurement Executive, determine a reasonable price or fee, subject to contractor appeal as provided in the Disputes clause. In any event, the contractor shall proceed with completion of the contract, subject only to the Limitation of Judiciary Liability clause.
- (1) After the contracting officer's determination of price or fee, the contract will be governed by:
    - (i) all judiciary required clauses on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts as determined by the contracting officer under this paragraph (c);
    - (ii) all clauses required by law as of the date of the contracting officer's determination; and
    - (iii) any other clauses, terms, and conditions mutually agreed upon.
  - (2) To the extent consistent with paragraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract will continue in effect, except those that by their nature apply only to a letter contract.
- (d) The definitive contract resulting from this letter contract will include a negotiated \_\_\_\_\_ *(contracting officer inserts "firm fixed price" or "total estimated reimbursable cost")* in no event to exceed \$ \_\_\_\_\_ *(contracting officer inserts the proposed amount upon which the award was based)*.
- (end)

### **JP3 Clause 4-50, Payment of Allowable Costs before Definitization**

*As prescribed in 4.1.9h(4), the contracting officer will insert this clause in Section I.*

#### **Payment of Allowable Costs before Definitization (JAN 2003)**

- (a) *Reimbursement rate* Pending the placing of the definitized contract referred to in this letter contract, the judiciary will promptly reimburse the contractor for all allowable costs under the contract at the following rates:

- (1) one hundred percent of written approved costs representing financing payments to subcontractors under fixed-price subcontracts, provided that the judiciary's payments to the contractor will not exceed 80 percent of the allowable costs of those subcontracts;
  - (2) one hundred percent of written approved costs representing cost-reimbursement subcontracts, provided, that the judiciary's payments to the contractor will not exceed 85 percent of the allowable costs of those subcontracts;
  - (3) eighty-five percent of all other written approved costs.
- (b) *Limitation of reimbursement* To determine the amounts payable to the contractor under this letter contract, the contracting officer will determine allowable costs. The total reimbursement made under this paragraph will not exceed 85 percent of the maximum amount of the judiciary's liability, as stated in this contract.
- (c) *Invoicing* Payments will be made promptly to the contractor when requested as work progresses, but not more often than once each month (or more often if approved in writing by the contracting officer). The contractor may submit to an authorized representative of the contracting officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable costs incurred by the contractor in performance of this contract.
- (d) *Allowable costs* For the purpose of determining allowable costs, the term "costs" includes:
- (1) those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for products or services purchased directly for the contract;
  - (2) when the contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid for:
    - (i) products and services purchased directly for the contract, provided payments will be made:
      - (A) in accordance with the terms and conditions of a subcontract or invoice; and
      - (B) ordinarily prior to the submission of the contractor's next payment request to the judiciary;
    - (ii) materials issued from the contractor's stores inventory and placed in the production process for use on the contract;
  - (iii) direct labor;
  - (iv) direct travel;
  - (v) other direct in-house costs; and
  - (vi) properly allocable and allowable indirect costs, as shown on the records maintained by the contractor for purposes of obtaining reimbursement under judiciary contracts; and
- (3) the amount of financing payments that the contractor has paid by cash, check, or other forms of payment to subcontractors.

- (e) *Audit* At any time before final payment, the contracting officer may have the contractor's invoices or vouchers and statements of cost audited. Any payment may be:
- (1) reduced by any amounts found by the contracting officer not to constitute allowable costs; or
  - (2) adjusted for prior overpayments or under payments made on preceding invoices or vouchers.

(end)

### **JP3 Clause 4-55, Economic Price Adjustment - Standard Products**

*As prescribed in 4.1.12j, the contracting officer will insert this clause in Section I.*

*The clause may be modified by increasing the 10 percent limit on aggregate increases specified in paragraph (c)(1), upon written approval by the Procurement Executive, PMD.*

#### **Economic Price Adjustment-Standard Products (JAN 2003)**

- (a) The contractor warrants that the unit price stated in the schedule for \_\_\_\_\_ [*offeror inserts schedule line item number*] is not in excess of the contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that:
  - (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public; and
  - (2) is the net price after applying any standard trade discounts offered by the contractor.
- (b) The contractor shall promptly notify the contracting officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price will be decreased by the same percentage that the established price is decreased. The decrease will apply to those items delivered on and after the effective date of the decrease in the contractor's established price, and this contract will modified accordingly.
- (c) If the contractor's applicable established price is increased after the contract date, the corresponding contract unit price will be increased, upon the contractor's written request to the contracting officer, by the same percentage that the established price is increased, and the contract will be modified accordingly, subject to the following limitations:
  - (1) the aggregate of the increases in any contract unit price under this clause will not exceed 10 percent of the original contract unit price;
  - (2) the increased contract unit price will be effective:
    - (i) on the effective date of the increase in the applicable established price if the contracting officer receives the contractor's written request within 10 days thereafter; or

- (ii) if the written request is received later, on the date the contracting officer receives the request;
  - (3) the increased contract unit price will not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the contractor, within the meaning of the Default clause.
  - (4) no modification increasing a contract unit price will be executed under this paragraph (c) until the contracting officer verifies the increase in the applicable established price;
  - (5) within 30 days after receipt of the contractor's written request, the contracting officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.
  - (d) During the time allowed for the cancellation provided for in paragraph (c)(5) of this clause, and thereafter if there is no cancellation, the contractor shall continue deliveries according to the contract delivery schedule, and the judiciary will pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.
- (end)

### **JP3 Clause 4-60, Allowable Cost and Payment**

*As prescribed in 4.1.13h(1), the contracting officer will insert this clause in Section I.*

#### **Allowable Cost and Payment (JAN 2003)**

- (a) *Invoicing* The judiciary will make payments to the contractor when requested as work progresses, but not more than monthly, in amounts determined to be allowable by the contracting officer. The contractor shall submit an invoice or voucher to the address specified in the schedule, supported by a statement of claimed allowable costs of performing this contract, in such form and detail as the contracting officer may require.
- (b) *Reimbursing costs*
  - (1) For the purpose of reimbursing allowable costs, the term “costs” includes only:
    - (i) those recorded costs that, at the time of the request for reimbursement, the contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;
    - (ii) when the contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
      - (A) products and services purchased directly for the contract and associated financing payments to subcontractors, provided payments will be made:
        - (1) in accordance with the terms and conditions of a subcontract or invoice; and

- (2) ordinarily prior to the submission of the contractor's next payment request to the judiciary;
  - (B) materials issued from the contractor's inventory and placed in the production process for use on the contract;
  - (C) direct labor;
  - (D) direct travel;
  - (E) other direct in-house costs; and
  - (F) Properly allocable and allowable indirect costs, as shown in the records maintained by the contractor for purposes of obtaining reimbursement under judiciary contracts; and
- (iii) The amount of progress payments that have been paid by cash, check, or other forms of payment to subcontractors.
- (2) Accrued costs of contractor contributions under employee pension plans will be excluded until actually paid unless:
  - (i) the contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and
  - (ii) the contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid will be excluded from the contractor's indirect costs for payment purposes).
- (3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (e) of this clause, allowable indirect costs under this contract will be obtained by applying indirect cost rates established in accordance with paragraph (c) of this clause.
- (4) Any statements in specifications or other documents incorporated by reference in this contract designating performance of services or furnishing of materials at the contractor's expense or at no cost to the judiciary will be disregarded for purposes of cost reimbursement under this clause.
- (c) *Final indirect cost rates*
  - (1) Final annual indirect cost rates and the appropriate bases will be established in accordance with JP3 Chapter 4 in effect for the period covered by the indirect cost rate offer.
  - (2)
    - (i) The contractor shall submit an adequate final indirect cost rate offer to the contracting officer and auditor within 90 days after the end of each of its fiscal years, or by a later date approved in writing by the contracting officer. The contractor shall support the cost data and specify the contract and/or subcontract to which the rates apply.
    - (ii) The proposed rates shall be based on the contractor's actual cost experience for that period. The contracting officer or contracting officer's representative and the contractor will establish the final indirect cost rates as promptly as practical after receipt of the contractor's offer.

- (3) The contractor and the contracting officer will execute a written understanding setting forth the final indirect cost rates. The understanding will specify:
  - (i) the agreed-upon final annual indirect cost rates;
  - (ii) the bases to which the rates apply;
  - (iii) the periods for which the rates apply;
  - (iv) any specific indirect cost items treated as direct costs in the settlement; and
  - (v) the affected contract an/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding will not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.
- (4) Failure by the parties to agree on a final annual indirect cost rate will be a dispute within the meaning of the Disputes clause.
- (5) Within 120 days (or a period approved in writing by the contracting officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.
- (6)
  - (i) If the contractor fails to submit a completion invoice or voucher within the time specified in paragraph (c)(5) of this clause, the contracting officer may:
    - (A) determine the amounts due to the contractor under the contract; and
    - (B) record this determination in a unilateral modification to the contract.
  - (ii) The determination constitutes the final decision of the contracting officer in accordance with the Disputes clause.
- (d) *Billing rates* Until final annual indirect cost rates are established for any period, the judiciary will reimburse the contractor at billing rates established by the contracting officer subject to adjustment when the final rates are established. These billing rates:
  - (1) will be the anticipated final rates; and
  - (2) may be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (e) *Audit* At any time or times before final payment, the contracting officer may have the contractor's invoices or vouchers and statements of cost audited. Any payment may be:
  - (1) reduced by amounts found by the contracting officer not to constitute allowable costs; or
  - (2) adjusted for prior overpayments or under-payments.
- (f) *Final payment*
  - (1) Upon written approval of a completion invoice or voucher, submitted by the contractor in accordance with paragraph (c)(5) of this clause, and upon the contractor's compliance with all terms of this contract, the judiciary will promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
  - (2) The contractor shall pay to the judiciary any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the contractor or any assignee

under this contract, to the extent that those amounts are properly allocable to costs for which the contractor has been reimbursed by the judiciary. Reasonable expenses incurred by the contractor for securing refunds, rebates, credits, or other amounts are allowable costs if approved in writing by the contracting officer. Before final payment under this contract, the contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:

- (i) an assignment to the judiciary, in form and substance satisfactory to the contracting officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the contractor has been reimbursed by the judiciary under this contract; and
- (ii) a release discharging the judiciary, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except:
  - (A) specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
  - (B) claims (including reasonable incidental expenses) based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that the claims are not known to the contractor on the date of the execution of the release, and that the contractor gives notice of the claims in writing to the contracting officer within six years following the release date or notice of final payment date, whichever is earlier; and
  - (C) claims for reimbursement of costs, including reasonable incidental expenses, incurred by the contractor under the patent clauses of this contract, excluding, however, any expenses arising from the contractor's indemnification of the judiciary against patent liability.

(end)

#### **JP3 Clause 4-65, Fixed Fee**

*As prescribed in 4.1.13h(2), the contracting officer will insert this clause in Section I.*

#### **Fixed Fee (JAN 2003)**

- (a) The judiciary will pay the contractor for performing this contract the fixed fee specified in the schedule.
- (b) Payment of the fixed fee will be made as specified in the schedule; provided that after payment of 85 percent of the fixed fee, the contracting officer may withhold further payment of fee until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed 15 percent of the total fixed fee or the judiciary's small purchase threshold, whichever is less. The contracting officer will release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate offer covering the year of physical completion of this contract, provided the contractor has

satisfied all other contract terms and conditions, and is not delinquent in submitting final vouchers on prior years' settlements. The contracting officer may release up to 90 percent of the fee withheld under this contract based on the contractor's past performance related to the submission and settlement of final indirect cost rate offers.

(end)

### **JP3 Clause 4-70, Incentive Fee**

*As prescribed in 4.1.13h(3), the contracting officer will insert this clause in Section I.*

#### **Incentive Fee (JAN 2003)**

- (a) *General* The judiciary will pay the contractor for performing this contract a fee determined as provided in the contract.
- (b) *Target cost and target fee* The target cost and target fee specified in the schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) of this clause.
  - (1) "Target cost" as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) of this clause.
  - (2) "Target fee" as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) of this clause.
- (c) *Withholding of payment* Normally, the judiciary will pay the fee to the contractor as specified in the schedule. However, when the contracting officer considers that performance or cost indicates that the contractor will not achieve target, the judiciary will pay on the basis of an appropriate lesser fee. When the contractor demonstrates that performance or cost clearly indicates that the contractor will earn a fee significantly above the target fee, the judiciary may, at the sole discretion of the contracting officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the contracting officer may withhold further payment of fee until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed 15 percent of the applicable fee or the judiciary's small purchase threshold, whichever is less. The contracting officer will release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate offer covering the year of physical completion of this contract, provided the contractor has satisfied all other contract terms and conditions, and is not delinquent in submitting final vouchers on prior years' settlements. The contracting officer may release up to 90 percent of the fee withholds under this contract based on the contractor's past performance related to the submission and settlement of final indirect cost rate offers.
- (d) *Equitable adjustments* When the work under this contract is increased or decreased by a contract modification or when any equitable adjustment in the target cost is authorized under any



other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, will be stated in a supplemental agreement to this contract.

(e) *Fee payable*

- (1) The fee payable under this contract will be the target fee increased by \_\_\_\_ cents (*contracting officer inserts contractor's participation*) for every dollar that the total allowable cost is less than the target cost or decreased by \_\_\_\_ cents (*contracting officer inserts contractor's participation*) for every dollar that the total allowable cost exceeds the target cost. In no event will the fee be greater than \_\_\_\_ percent or less than \_\_\_\_ percent (*contracting officer inserts percentages*) of the target cost.
- (2) The fee will be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations in paragraph (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of:
  - (i) payments made under assignments; or
  - (ii) claims excepted from the release required by paragraph (f)(2) of the Allowable Cost and Payment clause.
- (3) If this contract is terminated in its entirety, the portion of the target fee payable will not be subject to an increase or decrease as provided in this paragraph. The termination will be accomplished in accordance with other applicable clauses of this contract.
- (4) For the purpose of fee adjustment, "total allowable cost" does not include allowable costs arising out of:
  - (i) any of the causes covered by the Excusable Delays clause, to the extent that they are beyond the control and without the fault or negligence of the contractor or any subcontractor;
  - (ii) the taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
  - (iii) any direct cost attributed to the contractor's involvement in litigation as required by the contracting officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;
  - (iv) the purchase and maintenance of additional insurance not in the target cost and required by the contracting officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance Liability to third Persons clause;
  - (v) any claim, loss, or damage resulting from a risk for which the contractor has been relieved of liability by the Judicial Property clause; or
  - (vi) any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the judiciary has expressly agreed to indemnify the contractor.

- (5) All other allowable costs are included in “total allowable cost” for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.
- (f) *Contract modification* The total allowable cost and the adjusted fee determined as provided in this clause will be evidenced by a modification to this contract signed by the contractor and contracting officer.
- (g) *Inconsistencies* In the event of any language inconsistencies between this clause and provisioning documents or judiciary options under this contract, compensation for spare parts or other products and services ordered under such documents will be determined in accordance with this clause.

(end)

### **JP3 Clause 4-75, Cost Contract - No Fee**

*As prescribed in 4.1.13h(4), the contracting officer will insert this clause in Section I.*

#### **Cost Contract - No Fee (JAN 2003)**

- (a) The judiciary will not pay the contractor a fee for performing this contract.
- (b) After payment of 80 percent of the total estimated cost shown in the schedule, the contracting officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed whichever is less - one percent of the total estimated cost shown in the schedule, or
  - (1) \$10,000 for nonprofit organizations, or
  - (2) \$100,000 for all other organizations.

(end)

### **JP3 Clause 4-80, Cost-Sharing Contract - No Fee**

*As prescribed in 4.1.13h(5), the contracting officer will insert this clause in Section I.*

#### **Cost-Sharing Contract - No Fee (JAN 2003)**

- (a) The judiciary will not pay the contractor a fee for performing this contract.
- (b) After paying the contractor 80 percent of the judiciary's share of the total estimated cost of performance shown in the schedule, the contracting officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the contracting officer considers necessary to protect the judiciary's interest. This reserve will not exceed whichever is less:
  - (1) one percent of the judiciary's share of the total estimated cost shown in the schedule, or
  - (2) \$10,000 for nonprofit organizations, or

- (3) \$100,000 for all other organizations.
- (end)

### **JP3 Clause 4-85, Limitation of Cost**

*As prescribed in 4.1.13h(6), the contracting officer will insert this clause in Section I.*

#### **Limitation of Cost (JAN 2003)**

- (a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the judiciary more than (1) the estimated cost specified in the schedule, or, (2) if this is a cost-sharing contract, the judiciary's share of the estimated cost specified in the schedule. The contractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract includes both the judiciary's and the contractor's share of the cost.
- (b) The contractor shall notify the contracting officer in writing whenever it has reason to believe that:
  - (1) the costs the contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the schedule; or
  - (2) the total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.
- (c) As part of the notification, the contractor shall provide the contracting officer a revised estimate of the total cost of performing this contract.
- (d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause:
  - (1) the judiciary is not obligated to reimburse the contractor for costs incurred in excess of (i) the estimated cost specified in the schedule, or (ii) if this is a cost-sharing contract, the estimated cost to the judiciary specified in the schedule; and
  - (2) the contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost or otherwise incur costs in excess of the estimated cost specified in the schedule, until the contracting officer (i) , notifies the contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase will be allocated in accordance with the formula specified in the schedule.
- (e) No notice, communication, or representation in any other form other than that specified in paragraph (d)(2) of this clause, or from any person other than the contracting officer, will affect this contract's estimated cost to the judiciary. In the absence of the specified notice, the judiciary is not obligated to reimburse the contractor for any costs in excess of the estimated cost

or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the judiciary specified in the schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

- (f) If the estimated cost specified in the schedule is increased, any costs the contractor incurs before the increase that are in excess of the previously estimated cost will be allowable to the same extent as if incurred afterwards, unless the contracting officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- (g) Change orders will not be considered an authorization to exceed the estimated cost to the judiciary specified in the schedule, unless they contain a statement increasing the estimated cost.
- (h) If this contract is terminated or the estimated cost is not increased, the judiciary and the contractor will negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(end)

### **JP3 Clause 4-90, Limitation of Funds**

*As prescribed in 4.1.13h(7), the contracting officer will insert this clause in Section I.*

#### **Limitation of Funds (JAN 2003)**

- (a) The parties estimate that performance of this contract will not cost the judiciary more than (1) the estimated cost specified in the schedule, or (2) if this is a cost-sharing contract, the judiciary's share of the estimated cost specified in the schedule. The contractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under this contract within this estimated cost, which if this is a cost-sharing contract, includes both the government's and the contractor's share of the cost.
- (b) The schedule specifies the amount presently available for payment by the judiciary and allotted to this contract, the items covered, the judiciary's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated that allotted amount will cover. The parties contemplate that the judiciary will allot additional funds incrementally to the contract up to the full estimated cost to the judiciary specified in the schedule, exclusive of any fee. The contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the judiciary under the contract approximates but does not exceed the total amount actually allotted by the judiciary to the contract.
- (c) The contractor shall notify the contracting officer in writing whenever the it has reason to believe that the costs it expects to incur under this contract in the next 60 days), when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the judiciary or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the judiciary plus the contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the schedule.

- (d) Sixty days before the end of the period specified in the schedule, the contractor shall notify the contracting officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the schedule or otherwise agreed upon, and when the funds will be required.
- (e) If, after notification, additional funds are not allotted by the end of the period specified in the schedule or another agreed-upon date, upon the contractor's written request, the contracting officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the contracting officer may terminate this contract on that later date.
- (f) Except as required by other provisions of this contract specifically citing and stated to be an exception to this clause,:
  - (1) the judiciary is not obligated to reimburse the contractor for costs incurred in excess of the total amount allotted by the judiciary to this contract; and
  - (2) the contractor is not obligated to continue performance under this contract (including actions under the contract's Termination clause of this contract) or otherwise incur costs in excess of:
    - (i) the amount then allotted to the contract by the judiciary or;
    - (ii) if this is a cost-sharing contract, the amount then allotted by the judiciary to the contract plus the contractor's corresponding share, until the contracting officer notifies the contractor in writing that the amount allotted by the judiciary has been increased and specifies an increased amount, which will then constitute the total amount allotted by the judiciary to this contract.
- (g) The estimated cost will be increased to the extent (1) the amount allotted by the judiciary or, (2) if this is a cost-sharing contract, the amount then allotted by the judiciary to the contract plus the contractor's corresponding share, exceeds the estimated cost specified in the schedule. If this is a cost-sharing contract, the increase will be allocated in accordance with the formula specified in the schedule.
- (h) No notice, communication, or representation in any other form other than that specified in paragraph (f)(2) of this clause, or from any person other than the contracting officer, will affect the amount allotted by the judiciary to this contract. In the absence of the specified notice, the judiciary is not obligated to reimburse the contractor for any costs in excess of the total amount allotted by the judiciary to this contract, whether incurred during the course of the contract or as a result of termination.
- (i) When and to the extent that the amount allotted by the judiciary to the contract is increased, any costs the contractor incurs before the increase)that are in excess of:
  - (1) the amount previously allotted by the judiciary or;
  - (2) if this is a cost-sharing contract, the amount previously allotted by the judiciary to the contract plus the contractor's corresponding share, will be allowable to the same extent

as if incurred afterward, unless the contracting officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

- (j) Change orders will not be considered an authorization to exceed the amount allotted by the judiciary specified in the schedule, unless they contain a statement increasing the amount allotted.
- (k) Nothing in this clause will affect the right of the judiciary to terminate this contract. If this contract is terminated, the judiciary and the contractor will negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.
- (l) If the judiciary does not allot sufficient funds to allow completion of the work, the contractor is entitled to a percentage of the fee specified in the schedule equaling the percentage of completion of the work contemplated by this contract.

(end)

### **JP3 Clause 4-95, Price Reduction for Defective Cost or Pricing Data**

*As prescribed in 4.5.5(1), the contracting officer will insert this clause in Section I.*

#### **Price Reduction for Defective Cost or Pricing Data (JAN 2003)**

- (a) If any price, including profit or fee, negotiated in connection with this contract, or modification to this contract, or any cost reimbursable under this contract, was increased by any significant amount because:
  - (1) the contractor or subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
  - (2) a subcontractor or prospective subcontractor furnished the contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
  - (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract will be modified to reflect the reduction.
- (b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract will be limited to the amount, plus applicable overhead and profit markup, by which:
  - (1) the actual subcontract; or
  - (2) the actual cost to the contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the contractor; provided that the actual subcontract price was not itself affected by defective cost or pricing data).
- (c) (1) If the contracting officer determines under paragraph (a) of this clause that a price or cost reduction shall be made, the contractor agrees not to raise the following matters as a defense:

- (i) the contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;
  - (ii) the contracting officer shall have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;
  - (iii) the contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or
  - (iv) the contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2)
  - (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the contracting officer based upon the facts will be allowed against the amount of a contract price reduction if:
    - (A) the contractor certifies to the contracting officer that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset in the amount requested; and
    - (B) the contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
  - (ii) An offset will not be allowed if:
    - (A) the understated data were known by the contractor to be understated before the "as of date" specified on its Certificate of Current Cost or Pricing Data; or
    - (B) the judiciary proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the contractor shall be liable to and shall pay the United States at the time such overpayment is repaid:
  - (1) simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the contractor to the date the judiciary is repaid by the contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of Treasury under 26 U.S.C. 6621(a)(2); and
  - (2) a penalty equal to the amount of the overpayment, if the contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(end)

### **JP3 Clause 4-100, Price Reduction for Defective Cost or Pricing Data - Modifications**

*As prescribed in 4.5.5(2), the contracting officer will insert this clause in Section I.*

#### **Price Reduction for Defective Cost or Pricing Data - Modifications (JAN 2003)**

- (a) This clause will become operative only for any modification to this contract involving a pricing adjustment only when a request for cost or pricing data was necessary for the contracting officer to determine price reasonableness.
- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because:
  - (1) the contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
  - (2) a subcontractor or prospective subcontractor furnished the contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
  - (3) any of these parties furnished data of any description that were not accurate, the price or cost will be reduced accordingly and the contract will be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.
- (c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which:
  - (1) the actual subcontract; or
  - (2) the actual cost to the contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (d) (1) If the contracting officer determines under paragraph (b) of this clause that a price or cost reduction shall be made, the contractor agrees not to raise the following matters as a defense:
  - (i) the contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;



- (ii) the contracting officer shall have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;
  - (iii) the contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract;
  - (iv) the contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the contracting officer based upon the facts will be allowed against the amount of a contract price reduction if:
  - (A) the contractor certifies to the contracting officer that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset in the amount requested; and
  - (B) the contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset will not be allowed if:
  - (A) the understated data were known by the contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
  - (B) the judiciary proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the contractor shall be liable to and shall pay the United States at the time such overpayment is repaid:
  - (1) simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the contractor to the date the judiciary is repaid by the contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. § 6621(a)(2); and
  - (2) a penalty equal to the amount of the overpayment, if the contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(end)

**JP3 Clause 4-105, Integrity of Unit Prices**

*As prescribed in 4.5.5(3), the contracting officer will insert this clause in Section I.*

**Integrity of Unit Prices (JAN 2003)**

- (a) Any offer submitted for the negotiation of prices for items of products shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or procurement costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.
- (b) When requested by the contracting officer, the offeror/contractor shall also identify those products that it will not manufacture or to which it will not contribute significant value.
- (c) The contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: procurements at or below the judiciary's small purchase threshold; architect-engineer services; utility services; services where products are not required; commercial items; and petroleum products.

(end)

**JP3 Provision 4-110, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data**

*As prescribed in 4.5.5(4), the contracting officer will insert this clause in Section L.*

**Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (JAN 2003)**

- (a) *Exceptions from cost or pricing data*
  - (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following paragraphs. The contracting officer may require additional supporting information, but only to the extent necessary to determine whether an exception shall be granted, and whether the price is fair and reasonable.
    - (i) *Identification of the law or regulation establishing the price offered* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
    - (ii) *Commercial item exception* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar

items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this procurement. Such information may include:

- (A) for catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the offer is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;
  - (B) for market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;
  - (C) for items included on an active federal supply service multiple award schedule contract, proof that an exception has been granted for the schedule item.
- (2) The offeror grants the contracting officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.
- (b) *Requirements for cost or pricing data* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:
- (1) the offeror shall prepare and submit cost or pricing data and supporting attachments;
  - (2) as soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data.

**Alternate I** *The contracting officer may insert this provision if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. Replace the text of the basic provision with the following:*

- (a) Submission of cost or pricing data is not required.
- (b) Provide information described below: [*Contracting officer inserts description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price.*]  
(end)

### **JP3 Clause 4-115, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data-Modifications**

*As prescribed in 4.5.5(5), the contracting officer will insert this clause and appropriate Alternate(s) in Section I.*

#### **Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data-Modifications (JAN 2003)**

- (a) *Exceptions from cost or pricing data*
  - (1) In lieu of submitting cost or pricing data for modifications under this contract, the contractor may submit a written request for exception by submitting the information described in the following paragraphs. The contracting officer may require additional supporting information, but only to the extent necessary to determine whether an exception shall be granted, and whether the price is fair and reasonable:
    - (i) *Identification of the law or regulation establishing the price offered* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
    - (ii) *Information on modifications of contracts or subcontracts for commercial items*
      - (A) If:
        - (1) the original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the procurement of a commercial item; and
        - (2) the modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the contractor may provide information to establish that the modification would not

change the contract or subcontract from a contract or subcontract for the procurement of a commercial item to a contract or subcontract for the procurement of an item other than a commercial item.

- (B) For a commercial item exception, the contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include:
  - (1) for catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the offer is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;
  - (2) for market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;
  - (3) for items included on an active federal supply service multiple award schedule contract, proof that an exception has been granted for the schedule item.
- (2) The contractor grants the contracting officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the contractor's determination of the prices to be offered in the catalog or marketplace.
- (b) *Requirements for cost or pricing data* If the contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:
  - (1) the contractor shall submit cost or pricing data and supporting attachments;
  - (2) as soon as practicable after agreement on price, but before award (except for unpriced actions), the contractor shall submit a Certificate of Current Cost or Pricing Data.

**Alternate I** *The contracting officer may insert this provision if it is reasonably certain that cost*

*or pricing data or information other than cost or pricing data will be required.  
Replace the text of the basic provision with the following:*

- (a) Submission of cost or pricing data is not required.
- (b) Provide information described below: [*Contracting officer inserts description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price.*]

(end)

### **JP3 Provision 4-120, Cost Accounting Standards Notices and Certification**

*As prescribed in 4.6.2g(1), the contracting officer will insert this provision in Section K.*

#### **Cost Accounting Standards Notices and Certification (JAN 2003)**

**Note:** This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

#### **I. DISCLOSURE STATEMENT-COST ACCOUNTING PRACTICES AND CERTIFICATION**

- (a) When a contracting officer requires certified cost and pricing data, on an offer resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.
- (b) Any offeror submitting an offer which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 shall, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement shall be submitted as a part of the offer under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this offer. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

**Caution:** In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing offers or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) *Certificate of Concurrent Submission of Disclosure Statement* The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows:

(i) Original and one copy to the contracting officer

Date of Disclosure Statement: \_\_\_\_\_

Name and Address of contracting officer where filed:  
\_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this offer are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) *Certificate of Previously Submitted Disclosure Statement* The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: \_\_\_\_\_

Name and Address of contracting officer where filed:  
\_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this offer are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

☐ (3) *Certificate of Monetary Exemption* The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this offer was submitted. The offeror further certifies that if such status changes before an award resulting from this offer, the offeror will advise the contracting officer immediately.

☐ (4) *Certificate of Interim Exemption* The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet

required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this offer has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the contracting officer, in the form specified under paragraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

**Caution:** Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with offers submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

## II. COST ACCOUNTING STANDARDS-ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below will mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

- ☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this offer was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this offer, the offeror will advise the contracting officer immediately.

**Caution:** An offeror may not claim the above eligibility for modified contract coverage if this offer is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.



### III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

\_\_\_ yes

\_\_\_ no

(end)

#### **JP3 Clause 4-125, Cost Accounting Standards**

*As prescribed in 4.6.2g(2), the contracting officer will insert this clause in Section I.*

#### **Cost Accounting Standards (JAN 2003)**

- (a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR part 9903 are incorporated herein by reference and the contractor, in connection with this contract, shall:
- (1) (*CAS-covered contracts only*) by submission of a Disclosure Statement, disclose in writing the contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the contractor and which contain a Cost Accounting Standards (CAS) clause. If the contractor has notified the contracting officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the judiciary;
  - (2) follow consistently the contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change shall be applied prospectively to this contract and the Disclosure Statement shall be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment will be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate;
  - (3) comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR part 9904, in effect on the date of award of this contract or, if the contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the contractor's signed certificate of current cost or pricing data. The

- contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract;
- (4)
    - (i) agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the contractor is required to make to the contractor's established cost accounting practices;
    - (ii) negotiate with the contracting officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States;
    - (iii) when the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract;
  - (5) agree to an adjustment of the contract price or cost allowance, as appropriate, if the contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment will provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. § 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case will the judiciary recover costs greater than the increased cost to the judiciary, in the aggregate, on the relevant contracts subject to the price adjustment, unless the contractor made a change in its cost accounting practices of which it was aware or shall have been aware at the time of price negotiations and which it failed to disclose to the judiciary.
  - (b) If the parties fail to agree whether the contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. § 601).
  - (c) The contractor shall permit any authorized representatives of the judiciary to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
  - (d) The contractor shall include in all negotiated subcontracts which the contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48

CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause as set forth in *JP3* Chapter 4, shall be inserted. This requirement shall apply only to negotiated subcontracts when the contracting officer requires certified cost and pricing data, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(end)

### **JP3 Clause 4-130, Disclosure and Consistency of Cost Accounting Practices**

*As prescribed in 4.6.2g(3), the contracting officer will insert this clause in Section I.*

#### **Disclosure and Consistency of Cost Accounting Practices (JAN 2003)**

- (a) The contractor, in connection with this contract, shall:
- (1) comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard - Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR part 9904;
  - (2) (*CAS-covered contracts only*) if it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the contractor has notified the contracting officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the judiciary;
  - (3)
    - (i) follow consistently the contractor's cost accounting practices. A change to such practices may be proposed, however, by either the judiciary or the contractor, and the contractor agrees to negotiate with the contracting officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change shall be applied prospectively to this contract, and the Disclosure Statement, if affected, shall be amended accordingly;
    - (ii) the contractor shall, when the parties agree to a change to a cost accounting practice and the contracting officer has made the finding required in 48 CFR 9903.201-6(b), that the change is desirable and not detrimental to the interests of the judiciary, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.
  - (4) agree to an adjustment of the contract price or cost allowance, as appropriate, if the

contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. § 6621), from the time the payment by the United States was made to the time the adjustment is effected.

- (b) If the parties fail to agree whether the contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. § 601).
- (c) The contractor shall permit any authorized representatives of the judiciary to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.
- (d) The contractor shall include in all negotiated subcontracts, which the contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that:
  - (1) if the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in JP3 Chapter 4 shall be inserted;
  - (2) this requirement shall apply only to negotiated subcontracts when the contracting officer requires certified cost and pricing data;
  - (3) the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(end)

### **JP3 Clause 4-135, Cost Accounting Standards - Educational Institution**

*As prescribed in 4.6.2g(4), the contracting officer will insert this clause in Section I.*

#### **Cost Accounting Standards - Educational Institution (JAN 2003)**

- (a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the contractor, in connection with this contract, shall:
  - (1) (*CAS-covered contracts only*) if a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts

- being performed by the contractor and which contain a Cost Accounting Standards (CAS) clause. If the contractor has notified the contracting officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the judiciary;
- (2) follow consistently the contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change shall be applied prospectively to this contract and the Disclosure Statement, if required, shall be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A21, Cost Principles for Educational Institutions, requires that a change in the contractor's cost accounting practices be made after the date of this contract award, the change shall be applied prospectively to this contract and the Disclosure Statement, if required, shall be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate;
- (3) comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905 in effect on the date of award of this contract or, if the contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the contractor's signed certificate of current cost or pricing data. The contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract;
- (4) (i) agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the contractor is required to make to the contractor's established cost accounting practices;
- (ii) negotiate with the contracting officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States;
- (iii) when the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract;
- (iv) agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A21 accounting principle amendment which, on becoming effective after the date of

contract award, requires the contractor to make a change to the contractor's established cost accounting practices;

- (5) agree to an adjustment of the contract price or cost allowance, as appropriate, if the contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. § 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the judiciary recover costs greater than the increased cost to the judiciary, in the aggregate, on the relevant contracts subject to the price adjustment, unless the contractor made a change in its cost accounting practices of which it was aware or shall have been aware at the time of price negotiations and which it failed to disclose to the judiciary.
- (b) If the parties fail to agree whether the contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. § 601).
- (c) The contractor shall permit any authorized representatives of the judiciary to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- (d) The contractor shall include in all negotiated subcontracts which the contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or, if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that:
  - (1) if the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted;
  - (2) this requirement shall apply only to negotiated subcontracts when the contracting officer requires certified cost and pricing data; and
  - (3) the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(end)

**JP3 Clause 4-140, Predetermined Indirect Cost Rates**

*As prescribed in 4.6.2g(5), the contracting officer will insert this clause in Section I.*

**Predetermined Indirect Cost Rates (JAN 2003)**

- (a) Notwithstanding the Allowable Cost and Payment clause of this contract, the allowable indirect costs under this contract shall be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties, as specified below.
- (b)
  - (1) The contractor shall submit an adequate final indirect cost rate offer to the contracting officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the contracting officer. The contractor shall support its offer with adequate supporting data.
  - (2) The proposed rates shall be based on the contractor's actual cost experience for that period. The appropriate judiciary representative and the contractor shall establish the final indirect cost rates as promptly as practical after receipt of the contractor's offer.
- (c) Allowability of costs and acceptability of cost allocation methods will be determined by the contracting officer.
- (d) Predetermined rate agreements in effect on the date of this contract will be incorporated into the contract schedule. The contracting officer and contractor will negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement will specify:
  - (1) the agreed-upon predetermined indirect cost rates;
  - (2) the bases to which the rates apply;
  - (3) the period for which the rates apply; and
  - (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

The indirect cost rate agreement will not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon execution.

- (e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the contractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the contracting officer, subject to appropriate adjustment when the final rates for that period are established.
- (f) Any failure by the parties to agree on any predetermined indirect cost rates under this clause will not be considered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs will be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.

- (g) Allowable indirect costs for the period from the beginning of performance until the end of the contractor's fiscal year (or other period specified in the schedule) will be obtained using the predetermined indirect cost rates and the bases shown in the schedule.
- (end)

### **JP3 Clause 4-145, Administration of Cost Accounting Standards**

*As prescribed in 4.6.2.g(6), the contracting officer will insert this clause in Section I.*

#### **Administration of Cost Accounting Standards (JAN 2003)**

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the contractor shall take the steps outlined in paragraphs (a) through (g) of this clause:

- (a) Submit to the contracting officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis shall identify the potential impact on funds of the judiciary as follows:
  - (1) for any change in cost accounting practices required in accordance with paragraph (a)(3) and subdivision (a)(4)(i) JP3 Clause 4-125, "Cost Accounting Standards;" or paragraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of JP3 Clause 4-135, "Cost Accounting Standards-Educational Institution;" within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change;
  - (2) for any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of JP3 Clauses 4-125, "Cost Accounting Standards," and JP3 Clause 4-135, "Cost Accounting Standards-Educational Institution;" or with paragraph (a)(3) of JP3 Clause 4-130, "Disclosure and Consistency of Cost Accounting Practices," not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change;
  - (3) for any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) at JP3 Clause 4-125, "Cost Accounting Standards," and JP3 Clause 4-135, "Cost Accounting Standards-Educational Institution;" or by paragraph (a)(4) at JP3 Clause 4-130, "Disclosure and Consistency of Cost Accounting Practices)":
    - (i) within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or
    - (ii) in the event of contractor disagreement with the initial finding of noncompliance, within 60 days of the date the contractor is notified by the contracting officer of the determination of noncompliance.



- (b) After the contracting officer's determination of materiality, submit a cost impact offer in the form and manner specified by the contracting officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact offer shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.
- (1) Cost impact offers submitted for changes in cost accounting practices required in accordance with paragraph (a)(3) and subdivision (a)(4)(i) of the *JP3* Clause 4-125, "Cost Accounting Standards;" or paragraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of *JP3* Clause 4-135, "Cost Accounting Standards - Educational Institution;" shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled "Cost Accounting Standards" or "Cost Accounting Standards-Educational Institution," which have an award date before the effective date of that standard or cost principle.
  - (2) Cost impact offers submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of *JP3* Clause "125, Cost Accounting Standards, and *JP3* Clause 4-135, Cost Accounting Standards-Educational Institution;" or with paragraph (a)(3) of the *JP3* Clause 4-130, "Disclosure and Consistency of Cost Accounting Practices;" shall identify all contracts and subcontracts containing *JP3* Clauses 4-125, "Cost Accounting Standards," 4-135, "Cost Accounting Standards-Educational Institution," and 4-130, "Disclosure and Consistency of Cost Accounting Practices."
  - (3) Cost impact offers submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by paragraph (a)(5) of the *JP3* Clauses at 4-125, "Cost Accounting Standards," and 4-135, "Cost Accounting Standards-Educational Institution;" or by paragraph (a)(4) of the *JP3* Clause at 4-130, "Disclosure and Consistency of Cost Accounting Practices," shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.
- (c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the contracting officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the contracting officer.
- (d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the *JP3* Clauses 4-125 and 4-135; or with paragraphs (a)(3) or a(4) of the "Disclosure and Consistency of Cost Accounting Practices" at *JP3* Clause 4-130.
- (e) For all subcontracts subject to the *JP3* Clauses at 4-120, 4-130, or 4-135:

- (1) so state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used);
- (2) include the substance of this clause in all negotiated subcontracts; and
- (3) within 30 days after award of the subcontract, submit the following information to the contractor's contracting officer for transmittal to the contract administration office cognizant of the subcontractor's facility:
  - (i) subcontractor's name and subcontract number;
  - (ii) dollar amount and date of award; and
  - (iii) name of contractor making the award.
- (f) Notify the contracting officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a offer for adjusting the higher tier subcontract or the prime contract appropriately.
- (g) For subcontracts containing the *JP3* Clauses 4-125 or 4-135 require the subcontractor to comply with all standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(end)